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17 *Attorney for Defendants*

15 UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF HAWAII
17

18
19 Martin J. Walsh, Secretary of Labor, United
20 States Department of Labor,

21 Plaintiff,
22 v.

23 Acme Pumping Services, Inc., et al.

24 Defendants.

Case No. 1:20-cv-00397-WRP

Consent Judgment

25 Plaintiff Martin J. Walsh, Secretary of Labor, United States Department of Labor ("Secretary"),
26 and Defendants George Grace III, an individual and his eleven companies doing business as Acme
27 Pumping Services, Inc.; Paradise Lua, Inc.; Pinky Tows, LLC; Pinky Tows Hawaii, Inc.; Pinky Tows,
28

1 Inc.; Porky's Trucking LLC; Sharks Equity Recovery, Inc.; Pinky Tows Roadside Recovery, Inc.;
2 Pinky Tows Pacific, Inc.; Wise Ass Events, Inc.; West Side Adventures, Inc. have agreed to resolve the
3 matters in controversy in this civil action and consent to the entry of this Consent Judgment in
4 accordance herewith:

5 A. The Secretary filed a Complaint in the above-captioned proceeding naming Defendants
6 and alleging they violated provisions of sections 7, 11(c), 15(a)(2) and 15(a)(5) of the Fair Labor
7 Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. §§ 207, 211(c), 215(a)(2) and 15(a)(5).

8 B. Defendants have retained defense counsel and appeared in this action.

9 C. The Secretary conducted an investigation of Defendants pursuant to the FLSA covering
10 the period beginning on September 20, 2017 and ending on September 14, 2019. The parties have
11 agreed to settle and resolve all alleged FLSA violations attributable to Defendants through this Consent
12 Judgment.

13 D. The Parties agree to waive findings of fact and conclusions of law and agree to the entry
14 of this Consent Judgment without further contest.

15 E. Defendants admit that the Court has jurisdiction over the parties and subject matter of
16 this civil action and that venue lies in the District of Hawaii.

17 F. Defendants admit they provide a variety of transportation, sanitation, and entertainment
18 services.

19 G. Defendants admit they did not keep records of all hours worked by employees during the
20 liability period as required by 29 U.S.C. § 211 and regulations promulgated thereunder.

21 H. Defendants admit they failed to pay overtime for all hours worked in excess of forty per
22 week to employees during the liability period as required by 29 U.S.C. § 207 and regulations
23 promulgated thereunder.

24 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that, pursuant to Section 17 of
25 the FLSA, 29 U.S.C. § 217, Defendants, their officers, agents, servants, employees, successor
26 companies, parties in interest, and all persons and entities acting at their direction or in concert or
27 participation with them, are permanently enjoined and restrained from violating the FLSA, including
28 through any of the following manners:

1 1. Defendants shall not, contrary to the FLSA § 7, 29 U.S.C. § 207, employ any employee
2 who in any workweek is engaged in commerce, within the meaning of the FLSA § 3(s), or is employed
3 in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning
4 of FLSA § 3(s), for any workweek longer than 40 hours unless such employee receives compensation
5 for their employment in excess of 40 hours in such workweek at a rate not less than one and one-half
6 times the regular rate at which they are employed.

7 2. Defendants shall not fail to make, keep, make available to authorized agents of the
8 Secretary for inspection, transcription, and/or copying, upon their demand for such access, and preserve
9 records of employees and of the wages, hours, and other conditions and practices of employment
10 maintained, as prescribed by regulations issued, and from time to time amended, pursuant to FLSA §§
11 11(c) and 15(a)(5), 29 U.S.C. §§ 211(c) and 215(a)(5) and the implementing regulations found in Title
12 29, Code of Federal Regulations, Part 516.

13 3. Defendants shall comply with the FLSA and, if not already in effect at the time of entry
14 of this Consent Judgment, shall amend and maintain their payroll practices as follows:

15 a. Defendants shall accurately record the information required by 29 C.F.R. § 516.2
16 in payroll records, including (1) all hours worked by employees each workday and
17 workweek; (2) the rate(s) of pay for each of the hours worked during the workweek; (3) the
18 total weekly straight-time earnings for the hours worked during the workweek; (4) the total
19 premium pay for overtime hours;

20 b. For purposes of subparagraph 3(a), only the employee who performed the hours
21 worked may record the hours that employee worked. Such time records shall be used to
22 calculate hours worked for payroll purposes. If changes in the time records later are
23 required, Defendants shall designate and authorize one or more individuals to correct time
24 entry errors, and the employee must approve the change.

25 c. Defendants shall pay all employee wages for each pay period with one check.

26 d. Defendants shall maintain all time and payroll records for a period of not less
27 than three years.
28

1 e. Defendants shall record all wages paid to employees, regardless of the manner of
2 payment, on their payroll records, and any expense reimbursements may be recorded in
3 Defendants' accounting system. This requirement extends to any payments made to
4 employees for work performed on Saturdays and Sundays.

5 f. Defendants shall inform all supervisors, managers, and persons performing
6 payroll duties of the requirements of this Consent Judgment and shall provide a copy of this
7 Consent Judgment to all supervisors, managers, and persons performing payroll duties.

8 g. Defendants shall not alter or manipulate time or payroll records to reduce the
9 number of hours actually worked by an employee, and Defendants shall not encourage
10 workers to under-report their hours worked.

11 h. Defendants shall not direct supervisors, managers, or persons performing payroll
12 duties to falsify time or payroll records in any manner, including reducing the number of
13 hours worked by employees, and Defendants shall direct their supervisors, managers, and
14 persons performing payroll duties to encourage workers to report all hours worked.

15 4. Defendants, their officers, agents, servants, and employees and those persons in active
16 concert or participation with them, shall not in any way directly or indirectly, demand, require or accept
17 any of the back wages or liquidated damages from any of the employees listed on the attached **Exhibit**
18 **A**. Defendants shall not threaten or imply that adverse action will be taken against any employee
19 because of their receipt of funds due under this Consent Judgment. In addition to civil contempt,
20 violation of this Paragraph may subject the Defendants to punitive damages, among other equitable and
21 legal relief.

22 5. Defendants, their officers, agents, servants, and employees and those persons in active
23 concert or participation with them, shall not in any way retaliate or take any adverse employment
24 action, or threaten or imply that adverse action will be taken against any employee who exercises or
25 asserts their rights under the FLSA or provides information to any public agency investigating
26 compliance with the FLSA. In addition to civil contempt, violation of this Paragraph may subject the
27 Defendants to punitive damages, among other equitable and legal relief.

28 6. The parties agree that, of the total \$210,000 to be paid by Defendants, the first \$100,000

1 paid by Defendants will constitute unpaid wages, the next \$100,000 paid by Defendants will constitute
2 liquidated damages, and the remaining \$10,000 will constitute civil money penalties (“CMPs”).

3 7. Defendants, jointly and severally, shall not continue to withhold the payment of
4 \$100,000 in overtime pay hereby found to be due by the Defendants under the FLSA to employees, as a
5 result of their employment by Defendants during the period of September 20, 2017 to May 20, 2022
6 (“Back Wage Accrual Period”).

7 8. With respect to this settlement of this action and the terms and conditions set forth
8 herein, Defendants hereby waive all rights provided by any statute pertaining to the filing of an action,
9 the diligent prosecution of an action, and the entry of judgment as provided herein, including but not
10 limited to the statutes of limitation pertaining to the FLSA.

11 **FURTHER, JUDGMENT IS HEREBY ENTERED**, pursuant Section 16(c) and (e) of the
12 FLSA, 29 U.S.C. § 216(c) and (e), in favor of the Secretary and against Defendants in the amount of
13 \$210,000. Pursuant to this Judgment, **IT IS HEREBY ORDERED THAT**

14 9. Defendants shall pay the Secretary the total sum of \$210,000 in accordance with the
15 payment schedule outlined below:

16 a. By February 22, 2023, Defendants shall make approximately equal monthly
17 payments that total \$50,000. If Defendants fail to pay a total of \$50,000 by February 22, 2023,
18 then the Secretary may file the First Amended Consent Judgment (*see, infra*, ¶ 12) subject to
19 paragraph 14.

20 b. If Defendants satisfy subparagraph 9(a), Defendants shall make approximately
21 equal monthly payments that total \$160,000 by September 16, 2024. If Defendants fail to pay
22 the \$160,000 required by this subparagraph by September 16, 2024, then the Secretary may file
23 the First Amended Consent Judgment (*see, infra*, ¶ 12) subject to paragraph 14.

24 10. Defendants may make the payments required by this Consent Judgment online by ACH
25 transfer, credit card, debit card, or digital wallet by going to www.pay.gov and searching “WHD Back
26 Wage Payment - WE Region” for backwages (i.e., for the first \$100,000 of payments); “WHD
27 Liquidated Damages - WE Region” for liquated damages (i.e., for the second \$100,000 of payments);
28 “WHD Civil Monetary Penalty Payment Form – Western Region” for civil money penalties (i.e., for

1 the last \$10,000 in payments). Payments shall reference Case ID 1866330, Local File # 2019-198-
2 02392.

3 11. The Secretary will prepare a deed of trust on the property located at 87-1589 Kaukai
4 Road, Waianae, HI 96792 to secure the payments described in Paragraph 9. Defendants shall execute
5 and return the deed of trust within ten (10) business days of receiving the deed of trust from the Secretary.
6 The Secretary will record the executed deed of trust with the Bureau of Conveyances. Defendants will
7 not in any manner encumber or transfer this property before the deed of trust is executed or recorded.
8 Defendants shall warrant that the Secretary's deed of trust shall stand in priority to all creditors other
9 than the Internal Revenue Service.

10 12. Within (30) calendar days after the filing of this consent judgment, Defendants shall sign
11 a *First Amended Consent Judgment*, attached hereto as **Exhibit B**, which amends the amount of the
12 judgment to \$612,000.00.

13 13. The Secretary shall provide written notice of any delinquency to Defendants' counsel,
14 Randall Harakal, via e-mail (lawhi@yahoo.com; randall@shigemura.com). The written notice shall
15 specify that Defendants shall have twenty-one (21) business days, from date of the email of the notice,
16 to cure the delinquency identified. The parties will attempt to resolve Defendants' delinquency during
17 the 21-day cure period. If Defendants claim inability to complete timely payments, then Defendants
18 shall produce all reasonable documentation requested by the Secretary related to this claim including
19 tax returns, payroll records, customer invoices, bank statements, and financial statements (e.g., balance
20 sheet, profit and loss sheet, general ledger) within seven calendar days of the Secretary's request for
21 such supporting documentation.

22 14. If Defendants fail to make any of the payments in accordance with the schedule identified
23 in paragraph 9, and the period to cure in paragraph 13 has expired; fail to cure any dishonored payment
24 within the time limit set forth in paragraph 13; or otherwise fail to comply with any of the provisions of
25 this Consent Judgment and the period to cure in paragraph 13 has expired, the Secretary will be entitled
26 to entry of the parties' First Amended Consent Judgment against Defendants, in an amount calculated
27 as follows: \$612,000.00, minus the total amount paid by Defendants to the Secretary under the terms of
28 this Consent Judgment prior to the default. The First Amended Consent Judgment may not be entered

1 under any other circumstance.

2 15. Defendants hereby waive all rights to stay of execution and appeal, and agree that any
3 amended judgment entered pursuant to this Consent Judgment may be entered by the Court without a
4 noticed motion.

5 16. Within 30 calendar days after the Secretary's receipt of the entirety of the payments
6 described in paragraph 9, the Secretary will file, serve and record (if applicable) an Acknowledgment of
7 Full Satisfaction of Monetary Provision of Settlement/Judgment. Concurrently, the Secretary will take
8 all steps necessary to record a full reconveyance without warranty all the estate secured by the deed of
9 trust referenced in paragraph 11.

10 17. Defendants will assist the Wage and Hour Division with organizing a meeting or
11 meetings of all of Defendants' current employees to explain their rights by November 1, 2022. All
12 Defendants' current employees must attend and be compensated at their regular rates of pay for such
13 attendance.

14 18. Defendants' current managers, i.e., any individual with the authority to hire, fire, issue
15 schedules, process wage payments, and otherwise instruct workers as to the performance of their job
16 duties, will attend a training with the Wage and Hour Division regarding their obligations under the
17 FLSA by no later than November 1, 2022.


18 **IT IS FURTHER ORDERED** that the filing, pursuit, and/or resolution of this proceeding with
19 the entry of this Judgment shall not act as or be asserted as a bar to any action or claim under FLSA §
20 16(b), 29 U.S.C. § 216(b), as to any employee not named on the attached **Exhibit A**, nor as to any
21 employee named on the attached **Exhibit A** for any period not specified therein, nor as to any employer
22 other than Defendants.

23 **IT IS FURTHER ORDERED** that each party shall bear their own fees, costs, and other
24 expenses incurred by such party in connection with any stage of this proceeding, including but not
25 limited to attorneys' fees, which may be available under the Equal Access to Justice Act, as amended,
26 to the date of entry of the Judgment herein; and
27
28

1 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this action for purposes of
2 enforcing compliance with the terms of this Consent Judgment.

3
4 Dated: September 27, 2022





Wes Reber Porter
United States Magistrate Judge

1 For the Plaintiff:

2
3 MARC A. PILOTIN
4 Regional Solicitor

5 *Eduard Meleshinsky*
6 EDUARD MELESHINSKY
7 Trial Attorney

DATE: 9/16/2022

1 For Defendants:

2
3 The Defendants hereby appear and consent to the entry of this Judgment and waive notice by the Clerk
4 of Court.

5 Acme Pumping Services, Inc., et al.

6
7
8 George Grace III on behalf of

DATE: 9/7/2022

9 Acme Pumping Services, Inc.

10 Paradise Lua, Inc.

11 Pinky Tows Hawaii, Inc.

12 Pinky Tows, Inc.

13 Pinky Tows, LLC

14 Pinky Tows Pacific, Inc.

15 Pinky Tows Roadside Recovery, Inc.

16 Porky's Trucking LLC

17 Sharks Equity Recovery, Inc.

18 West Side Adventures, Inc.

19 Wise Ass Events, Inc.

20
21 George Grace III

22 Individually

DATE: 9-7-2022

23 As to form:

24 *Randall N Harakal*

25 Randall N. Harakal

26 Attorney for Defendants

DATE: 9/7/2022

Exhibit A
Employee List

First Name	Last Name	Back Wages Start Date	Back Wages End Date
SEBASTIAN	ACORDA	6/1/2018	12/31/2018
MIKAELE	ANTONIO	9/23/2017	11/3/2018
ANDREW	ARELLANEZ	9/23/2017	5/20/2022
KAPUA	AWONG	10/1/2018	5/20/2022
MICHAEL	BANUELOS	9/23/2017	12/31/2018
ASHLEY	BATTANU	8/15/2018	5/20/2022
LEILANI	BORLING	12/8/2017	5/20/2022
BONITA	BRADY	9/23/2017	8/22/2020
CALEB	BUMANGLAG	3/1/2018	5/20/2022
BENJAMIN	BURGO	9/23/2017	5/20/2022
TRAVIS	CHAVES	9/23/2017	5/20/2022
KYLE	CHONG	9/23/2017	5/20/2022
DEVOHN	DETWILER	12/31/2017	3/24/2018
NIKOLAS	EDAL-DAVIS	9/18/2017	9/30/2017
JARED	FIGUEROA	9/23/2017	9/30/2017
JUSTIN	FRANCA-SUMAILO	9/23/2017	11/17/2017
GUY	GASPER	2/27/2017	9/15/2017
RAMONA	GERVACIO	9/23/2017	3/10/2018
PEBBLES	GLENDON	9/23/2017	3/24/2018
BREANNE	HIGA	9/23/2017	5/20/2022
TIONA	HIGGINS	9/23/2017	5/20/2022
SHYDEN	ILAE-PAVE	9/2/2018	9/15/2018
CHARLES	INFERRA	9/23/2017	9/30/2017
JOHNELLE	IOANE	9/23/2017	5/20/2022
JAMES	KAHALOA	9/23/2017	5/20/2022
ALBERT	KALI	9/23/2017	5/20/2022
KAHELEKULANI (Umi)	KEAULANA	10/29/2017	5/20/2022
CHAD	KEKAUOHA	9/2/2018	11/3/2018
KAYLA	KENION	3/4/2018	7/28/2018
CALVIN	KIILAU	11/4/2017	5/20/2022
MOSES	KIKILA	9/23/2017	10/28/2017

1	MISTY ANN	KIMI	10/29/2017	9/29/2018
2	KENNETH	KIYABU	9/23/2017	10/28/2017
3	DUN	LAFOGA	9/23/2017	5/20/2022
4	JAMES	LEE	7/1/2018	9/29/2018
5	LAUREN	LEWANDOWSKI	10/29/2018	1/13/2018
6	JONAH	LORCH	9/23/2017	5/20/2022
7	RYSON	LUKE	12/8/2018	3/2/2019
8	DJ	LUM HO	9/23/2018	2/9/2019
9	OREPA	MALEPEAI	9/23/2017	9/23/2017
10	ERNELYN	Manuel- BUMANGLAG	5/1/2018	9/29/2018
11	EVAN	MARCUS	9/23/2017	10/21/2017
12	KEOKI	MEDEIROS	9/23/2017	9/19/2020
13	LARRY	MEYERS	3/18/2018	3/24/2018
14	KRISTEN	MIKA	9/23/2017	6/9/2018
15	ALEXANDER	MILHO	9/23/2017	5/20/2022
16	ALEJANDRO	MONTOYA	12/15/2018	5/20/2022
17	WILLIAM	NELSON	9/23/2017	8/4/2019
18	SAMUEL	NIAU	9/23/2017	3/24/2018
19	TUVALE	PAPU	8/12/2018	5/20/2022
20	ANJEANETTE	POE	9/23/2017	4/27/2019
21	JEFFREY	RABELLIZSA	9/23/2017	5/20/2022
22	THOMAS	RABELLIZSA	2/15/2018	11/3/2018
23	GORDON	ROBELLO	9/23/2017	5/20/2022
24	LEARTHUR	SANDERS	11/18/2018	5/20/2022
25	MIKIE	SCANLAN	10/14/2018	5/20/2022
26	FRANCES	SHIMABUKURO	12/9/2018	12/15/2018
27	VIRGINIA	SMITH	7/8/2018	11/24/2018
28	LOUIS	SOTO	10/21/2018	5/20/2022
	ROBERT	STEVENS	9/23/2017	5/20/2022
	PATRICE	TABANERA	12/16/2018	5/20/2022
	MARVIN	TUCKER	10/1/2017	6/2/2018
	SONNY	TUITELEAPAGA	9/23/2017	5/20/2022
	JAVEN	VINCENT	9/30/2018	12/8/2018
	KEKOA (Daniel)	WALLS	3/25/2018	4/28/2018

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Exhibit B

1
2 MARC A. PILOTIN
3 Regional Solicitor
4 BORIS ORLOV (Cal. Bar. No. 223532)
5 Counsel for Wage and Hour
6 EDUARD R. MELESHINSKY (Cal. Bar No. 300547)
7 Trial Attorney
8 UNITED STATES DEPARTMENT OF LABOR
9 90 7th Street, Suite 3-700
10 San Francisco, CA 94103
11 Telephone: (415) 625-7744
12 Fax: (415) 625-7772
13 Email: meleshinsky.eduard.r@dol.gov
14 *Attorneys for Plaintiff Martin J. Walsh*

10 RANDALL N. HARAKAL, #2844
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12 745 Fort Street
13 Honolulu, Hawaii 96813
14 Telephone: 531-9711
15 Fax: 537-9430
16 E-mail: randall@shigemura.com
17 *Attorney for Defendants*

15 UNITED STATES DISTRICT COURT
16
17 FOR THE DISTRICT OF HAWAII

18
19 Martin J. Walsh, Secretary of Labor, United
20 States Department of Labor,

21 Plaintiff,
22 v.

22 Acme Pumping Services, Inc., et al.

23 Defendants.
24
25
26
27
28

Case No. 1:20-cv-00397-WRP

First Amended Consent Judgment

1 Plaintiff Martin J. Walsh, Secretary of Labor, United States Department of Labor ("Secretary"),
2 and Defendants George Grace III, an individual and his eleven companies doing business as Acme
3 Pumping Services, Inc.; Paradise Lua, Inc.; Pinky Tows, LLC; Pinky Tows Hawaii, Inc.; Pinky Tows,
4 Inc.; Porky's Trucking LLC; Sharks Equity Recovery, Inc.; Pinky Tows Roadside Recovery, Inc.;
5 Pinky Tows Pacific, Inc.; Wise Ass Events, Inc.; West Side Adventures, Inc. agreed to resolve the
6 matters in controversy in this civil action and consent to the entry of a Consent Judgment fully-
7 executed on August 26, 2022.

8 1. The parties agree to modify the Consent Judgment such that judgment is entered,
9 pursuant Section 16(c) and (e) of the FLSA, 29 U.S.C. § 216(c) and (e), in favor of the Secretary and
10 against Defendants in the amount of \$612,000 minus \$ _____ (amount already paid by
11 Defendants) to total \$ _____ (amount of this amended judgment).

12 2. The parties further agree that the revised amount due pursuant to this amended judgment
13 will be composed of \$10,000 in civil money penalties with the remainder to be split equally between
14 back wages owed and liquidated damages.

15 Pursuant to this Judgment, **IT IS HEREBY ORDERED THAT:**

16 Defendants shall pay the Secretary the net sum identified in paragraph 1, above, within fourteen
17 calendar days of the entry of this judgment pursuant the procedure specified in paragraph 10 of the first
18 Consent Judgment. The terms of the first Consent Judgment are otherwise unmodified and are
19 incorporated by reference herein including but not limited to the Secretary's right to seek payment from
20 Defendants by way of the deed of trust described in paragraph 11 of the first Consent Judgment.

21 Dated:

22 _____
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27
28

FIRST AMENDED CONSENT JUDGMENT

1 For the Plaintiff:

2
3 MARC A. PILOTIN
4 Regional Solicitor

5 *Eduard Meleshinsky*
6 EDUARD MELESHINSKY
7 Trial Attorney

DATE: 9/16/2022

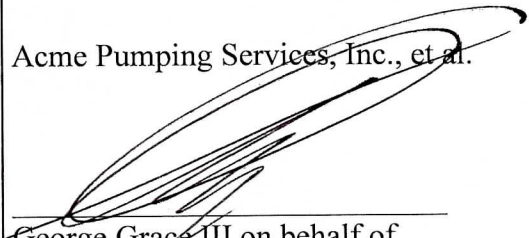
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FIRST AMENDED CONSENT JUDGMENT

1 For Defendants:

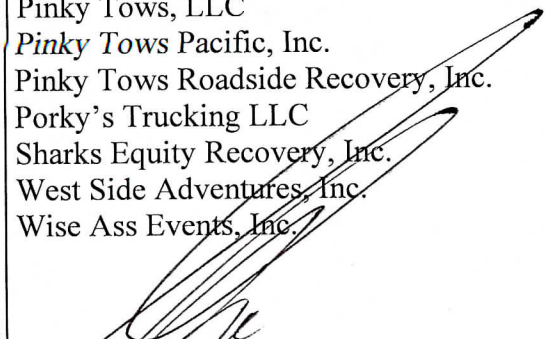
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3 The Defendants hereby appear and consent to the entry of this Judgment and waive notice by the Clerk
4 of Court.

5 Acme Pumping Services, Inc., et al.

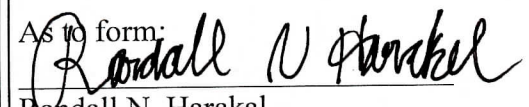
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7
8 
George Grace III on behalf of

DATE: 9/7/2022

9 Acme Pumping Services, Inc.
10 Paradise Lua, Inc.
11 Pinky Tows Hawaii, Inc.
12 Pinky Tows, Inc.
13 Pinky Tows, LLC
14 Pinky Tows Pacific, Inc.
15 Pinky Tows Roadside Recovery, Inc.
16 Porky's Trucking LLC
17 Sharks Equity Recovery, Inc.
18 West Side Adventures, Inc.
19 Wise Ass Events, Inc.

20
21 
22 George Grace III
23 Individually

DATE: 9/7/2022

24
25
26
27
28
29 As to form:
30 
31 Randall N. Harakal
32 Attorney for Defendants

DATE: 9/7/2022